

This letter discusses the taxation of express warranties and extended warranties. See 86 Ill. Adm. Code 140.141 and 86 Ill. Adm. Code 140.301. (This is a GIL).

November 29, 2005

Dear Xxxxx:

This letter is in response to your letter dated June 24, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing on behalf of the many automobile dealers that our company services in the State of Illinois. Our company represents several products to dealers that they can sell to consumers. Our dealer clients are asking us for an official position on whether or not certain products should be taxable to the consumer.

Specifically, we are selling them a road hazard warranty for tires and wheels (which is cancelable for the consumer) and a dent and ding protection policy (which is not cancelable).

Your representative in Chicago suggested that these items would not be taxable if they appeared on a separate line on the consumer contract. If they are lumped in with the purchase of the car, they would be taxed.

Please respond by either fax or by e-mail as soon as possible. We appreciate your prompt attention to this matter.

DEPARTMENT'S RESPONSE

In order to answer your questions, we have made some assumptions about what you mean by “not cancelable” and “cancelable.” We assume that “not cancelable” means that the warranty must be purchased by the customer and is included in the selling price of the vehicle. “Cancelable” means that the warranty is optional and is not required to be purchased with the vehicle.

When an item of tangible personal property such as a car is sold at retail, an express warranty from the manufacturer is often included in the selling price. This express warranty obligates the manufacturer to correct defects in materials and workmanship during a specified timeframe. When repairs are made under the terms of an express warranty, no tax is due and this is true whether the manufacturer makes the repairs or whether the manufacturer pays someone else to make the repairs. This is because the warranty (and any tangible personal property transferred under the warranty) was included as part of the retail selling price of the item and, as such, was subject to Retailers' Occupation Tax and Use Tax when the item was sold at retail. See subsection (b) of 86 Ill. Adm. Code 140.141.

Extended warranties (optional warranties) are contracts to provide repairs for a particular item for a stated period of time after a manufacturer's express warranty has expired. An extended warranty that is not included in the selling price of the item covered by the extended warranty is not subject to Retailers' Occupation Tax and Use Tax liability when the item is sold at retail. However, tangible personal property transferred incident to the completion of an extended warranty or maintenance agreement will result in Use Tax liability by the serviceman based on the cost price of that tangible personal property. See 86 Ill. Adm. Code 140.301(b)(3) and 86 Ill. Adm. Code 140.141(c).

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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